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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/607,131 | 06/27/2003 | Robert C. Young | 115867 | 5557 |

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| EXAMINER | |
|---|---|
| LEUNG, PHILIP H | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3742 | |

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/607,131 | YOUNG ET AL. | |
| | Examiner | Art Unit | |
| | Philip H. Leung | 3742 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *5-12-2005 & 5-13-2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-14,16-28,30,31,33 and 34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,11-14,16-28,30,31,33 and 34* is/are rejected.

7)☒ Claim(s) *2-10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 May 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 11-14, 16-28, 30, 31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clatfelter (US 4,342,788) (newly cited).

Clatfelter shows a microwave cooking process, comprising: providing a food product in or on a microwave cooking vessel (pot of cooking oil), wherein said food product comprises a food load and a coating composition directly coated on said food load, said coating composition comprises at least one microwave-absorbing oil or fat (after the pre-frying step, the food is coated with batter and oil); and exposing said food product in a microwave cooking container (full of hot oil of about 400 F). The exact temperature is obviously depending on the type and size of food to be cooked (see col. 4, line 10 – col. 7, line 33). These claims do not define over the "deep frying" process of Clatfelter as it does not require the high temperature heating by a susceptor converting the microwave energy into high temperature heat. The term "dry-fry-cooking" is only an intended function in a preamble without sufficient limitation to achieve the same.

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann (GB 2228662) (previously cited).

Schiffmann shows a microwave cooking process, comprising: providing a food product in or on a microwave cooking vessel, wherein said food product comprises a food load and a coating composition directly coated on said food load, said coating composition comprises at least one microwave-absorbing oil or fat; and exposing said food product in or on said microwave cooking container having a microwave susceptor to microwave energy in a microwave oven (see the abstract and Page 3, line 28 – Page 5, line 8). Schiffmann shows every feature as claimed except for the exact percentage of the coating. However, the exact percentage of the coating composition and the cooking temperature would have been a matter of engineering expediencies depending on the type and amount of food to be microwave heated and can be easily determined by an ordinary artisan following the teaching of Schiffmann (see Page 5, line 9 – Page 6, line 29 and the Examples on Pages 12-17. It is pointed out that as the claim does not specify the cooking temperature, the term "fry" is similar to "brown" in Schiffmann as it shows the use of a coating as claimed.

4. Claims 33 and 34 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan et al (US 4,283,425) (previously cited), in view of Schiffmann (GB 2228662).

Yuan shows a microwave dry-fry cooking process, comprising: providing a food product comprises a food load and a coating composition coated on said food load, said coating composition comprises at least one microwave-absorbing oil or fat; and exposing said food product in a microwave oven to crisp or fry the food product (see col. 3, line 28 – col. 5, line 48).

It does not explicitly show "placing a food product in or on a cooking vessel" although it is a routine practice for microwave cooking. Anyway, Schiffmann shows a microwave cooking process, comprising: providing a food product in or on a microwave cooking vessel, wherein said food product comprises a food load and a coating composition coated on said food load, said coating composition comprises at least one microwave-absorbing oil or fat; and exposing said food product in or on said microwave cooking container having a microwave susceptor to microwave energy in a microwave oven. It would have been obvious to one of ordinary skill in the art to modify Yuan to position the food product on or in a cooking vessel with a microwave susceptor to achieve a better and more efficient cooking result, in view of the teaching of Schiffmann (Pages 10 and 11). The exact percentage of the coating composition and the cooking temperature would have been a matter of engineering expediencies depending on the type and amount of food to be microwave heated and can be easily determined by an ordinary artisan following the teaching of Yuan (col. 5, line 50 – col. 7, line 25) and Schiffmann (see Page 5, line 9 – Page 6, line 29 and the Examples on Pages 12-17). Obviously, as Yuan achieves a similar dry-fry effect, the temperature must be similar as claimed. Furthermore, it teaches the use of fat content of up to 10%. The argument the Yuan teaches the use of a protein coating before the oil layer does not apply to these claims, as no "direct coating" is required in these claims. Although Yuan is directed to cooking potato only, it would have been obvious to an ordinary artisan that other food can be similarly cooked as applicant's list of food in the specification includes almost all types of food and along with potato. Therefore, it can be seen that the claimed list of food would be an arbitrary choices from all types of food without any significance or criticalities.

5. Claims 2-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicant's arguments filed 5-12-2005 and 5-13-2005 have been fully considered but they are not persuasive in regard to claims 31, 33 and 34, as these claims do not include "direct coating", "the amount of oil in the coating' and the "cooking temperature". Furthermore, the claimed process without the use of a susceptor does not sufficiently define over a microwave food frying process as the one disclosed by Clatfelter for the reasons set forth above.

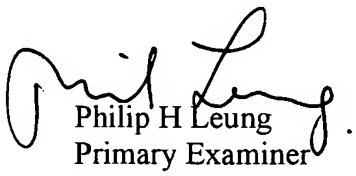
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Philip H Leung
Primary Examiner
Art Unit 3742

P.Leung/pl
8-06-2005